

county orders, were void, there being at the time no legislative authority for the issue of the bonds. In that case the supreme court said:

"To enable counties to fund their indebtedness, the legislature passed an act approved April 14, 1875. The question and policy is left by that act to a vote of the majority of the legal voters of the county. The implication would be that prior to the passage of this law counties had not the power exercised in this case."

In the case at bar it appears that there was a "bonded indebtedness of some \$60,000" against the town of Oquawka. This indebtedness was to be taken up and canceled at the rate of 50 cents on the dollar in part by the bonds here sued on. If there were no authority in the municipal corporation to issue bonds such as those here sued on, we do not see how the mere measure of convenience or advantage to the town can help the matter. The supreme court of Illinois in the case last cited said:

"It is not a question of advantage which the taxpayers may derive from the exercise of the power claimed, but it is a question of the right to exercise the power."

In *Merrill v. Monticello* and in *Brenham v. Bank* the municipal corporation itself sold upon the market, and received cash for the bonds sued on. It does not appear, however, that it would have made any difference if the city had received some other consideration, as the cancellation, for instance, of a prior indebtedness. The point against the municipal authority to issue such bonds is that they have the qualities of negotiable paper. They are not mere evidences of indebtedness, and nothing more. *Police Jury v. Britton*, 15 Wall. 566.

It is strongly insisted by counsel for plaintiff in error that the city of Oquawka was not lawfully incorporated, and that such illegality may be here asserted against the validity of the bonds. Possibly, *Shapleigh v. City of San Angelo*, 167 U. S. 646, 17 Sup. Ct. 957, is against this contention. At all events, and for reasons before given, the judgment is reversed, and the cause remanded, with the direction that judgment for plaintiff in error be entered in the circuit court.

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SOCIETY FOR SAVINGS v. BOARD OF COM'RS OF PRATT COUNTY.  
 AETNA LIFE INS. CO. v. BOARD OF COM'RS OF SEWARD COUNTY.  
 SAME v. BOARD OF COM'RS OF MEADE COUNTY. NATIONAL LIFE  
 INS. CO. v. BOARD OF COM'RS OF HASKELL COUNTY.

(Circuit Court, D. Kansas, S. D. September 13, 1897.)

Nos. 624, 629, 626, and 668.

**COUNTIES—REFUNDING INDEBTEDNESS—COUNTY WARRANTS.**

Under the Kansas statute authorizing counties to refund all matured and maturing indebtedness, counties have authority to refund county warrants, as well as other indebtedness, without referring the matter to a vote of the people. *Howard v. Kiowa Co.*, 73 Fed. 406, applied.

These were four suits, brought, respectively, against the defendant counties, upon past-due coupons cut from refunding bonds issued by said counties.

J. T. Herrick and Rossington, Smith & Dallas, for plaintiff Society for Savings.

Bentley & Hatfield, for plaintiff Aetna Life Ins. Co.

Bentley & Hatfield and J. T. Herrick, for plaintiff National Life Ins. Co.

S. S. Ashbaugh, for defendants Board of Com'rs of Pratt Co., Board of Com'rs of Meade Co., Board of Com'rs of Seward Co., and Board of Com'rs of Haskell Co.

WILLIAMS, District Judge. These are all actions at law, and are upon past-due coupons detached from bonds issued by the various counties sued upon, and the bonds from which the coupons are detached are all of the class denominated "refunding bonds," issued by the various counties. The court is constrained to say that all the questions in these cases have been passed upon by this court, and by the circuit court of appeals of this district; and I know of nothing that I can say that will add anything to or detract from the decision by this court of the case of *Howard v. Kiowa Co.*, 73 Fed. 406, in which every phase of the law as applicable to the refunding bonds issued by counties in the state of Kansas was passed upon, and not only by this court, but by the circuit court of appeals of this district. So, with all due deference to the very learned counsel who have made a vigorous, able, and lawyer-like defense in these cases, I am of the opinion that there is but one question in all the cases that has not been clearly passed upon, and that is the question solely as to whether counties, under the laws of the state of Kansas, have the right to refund the warrants of the county that had been previously issued, without referring the proposition to refund them to a vote of the people. The language of the statute is that they have the right to refund all matured and maturing indebtedness, and the question raised by the learned counsel for the defense is that county scrip is not the kind of indebtedness referred to in this act. I fail to see any difference between an indebtedness of the county, passed upon by the board of county commissioners, or the proper officers to pass upon any claim against the county, as evidenced by the solemn issuance of a writing signed by the proper officers, to which is affixed the seal of the county, and which calls upon the treasurer of the county to pay at sight to the bearer a certain amount of money, and a bond of the county executed by the same officers. As has been said very aptly by counsel for one of the plaintiffs in these cases, they are both evidences of indebtedness; and I fail to see any logic or reasoning that places one evidence of indebtedness in any different attitude or condition or light from the other. In fact, I think that this question has been well settled by the courts heretofore. In the case heretofore referred to (*Howard v. Kiowa Co.*), the court used this language:

"And the funding of warrants is often essential to the prosperity of the county. They become so numerous that they are greatly depreciated in value. Everything furnished to the county is upon the basis of the actual value of the warrants, necessitating the creation of a large debt for the purchase of trifling commodities. Under these circumstances, the only salvation lies in funding a portion of them, so that the remainder may gain something like their face

value, and the business of the county may no longer be transacted upon the basis of a ruinous discount."

I can add nothing to this language to convey the idea that the laws of the state of Kansas permitting county commissioners to refund the indebtedness of the counties authorizes the refunding of warrants, as has been done in these cases. This being the case, the court is content to let the matter, so far as it is concerned, rest on the adjudications it has heretofore made in like cases. There should be a verdict and judgment in all the cases for the plaintiffs.

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LANNING v. OSBORNE et al.

(Circuit Court, S. D. California. July 22, 1897.)

No. 671.

**WATER SUPPLY IN CALIFORNIA—CONTRACTS RELATING TO FURNISHING WATER—AMENDMENT OF ACT.**

The amendment of March 2, 1897, of Acts Cal. March 12, 1885, prescribing the manner of fixing water rates, by inserting therein a new section, which provides that nothing contained in the act shall be construed to prohibit or invalidate any contract relating to the sale, rental, or distribution of water, or to the sale or rental of easements or servitudes of the right to the flow and use of water, nor to prohibit or interfere with the vesting of rights under such contracts, does not give validity to any such contracts which in the absence of such amendment would be void.

Works & Works, for complainant.

Haines & Ward, C. H. Rippey, and J. S. Chapman, for defendants.

ROSS, Circuit Judge. This cause has been under consideration on two previous occasions. 76 Fed. 319; 79 Fed. 657. In considering the exceptions to the original answer the court held, among other things, that "as the water in question, from the moment the appropriation became effective, became charged with a public use, it was not in the power of either the corporation making the appropriation, or of the consumers, to make any contract or representation that would at all take away or abridge the power of the state to fix and regulate the rates" at which it should be furnished; that the constitution of California conferred upon the legislature of the state the power, and made it its duty, to prescribe the manner in which such rates should be established; and that the legislature did that by an act approved March 12, 1885 (St. 1885, p. 95), entitled "An act to regulate and control the sale, rental, and distribution of appropriated water in the state other than in any city, city and county, or town therein and to secure the rights of way for the conveyance of such water to the places of use." Construing that act, this court said in *Lanning v. Osborne*, 76 Fed. 335:

"By the terms of this act of the legislature, the boards of supervisors of the several counties are given power, and it is made their duty, in the manner prescribed in the act, to fix the maximum rates at which any person, company, or corporation may sell, rent, or distribute water appropriated for the purpose. The circumstances under which such board is authorized and required to do that thing are prescribed by sections 3, 4, 5, and 6 of the act. The action of the board can only be invoked in the first instance by a petition